FILED
NOV 21 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1955

No. 532

MARGOT VON OPEL, as receiver and sequestrator of the property of FRITZ VON OPEL,

Petitioner,

v.

UEBERSEE FINANZ KORPORATION, A. G., Liestal, Switzerland, FRITZ VON OPEL, HERBERT BROWNELL, JR., Attorney General and as Successor to the Alien Property Custodian, FRIMA TRUST ESTABLISHMENT OF VADUZ, Liechtenstein, HANS FRANKENBERG, EUGEN MEIER and ADOLF GAENG,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

RUSSELL HARDY,
Attorney for Petitioner,
1012 14th Street, N. W.,
Washington, D. C.

SUPREME PRINTING CO., INC., 114 WORTH STREET, N. Y. 13. BEEKMAN 3-2320
49

INDEX

	PAGE
Jurisdiction	2
Questions Presented	2
Citations to Opinions Below	2
Statutes Involved	3
Statement	3
Reasons for Granting Writ	5
Conclusion	7
Appendix A—Opinion of United States Court of Appeals for the District of Columbia Circuit	8
Appendix B—Applicable Sections of the Trading With The Enemy Act, as Amended, and Federal Rules of Civil Procedure	11
Appendix C—Opinion of Supreme Court of the United States	14

Cases Cited

Broderick v. Rosner, 294 U. S. 629 (1935)	6
Kaufman, et al. v. Societe Internationale, et al., 343 U. S. 156 (1953)	2, 5
Uebersee Finanz Korporation v. Clark, 82 F. Supp. 606	4n
Uebersee Finanz Korporation v. McGrath, 191 F. 2d 327; 89 U. S. App. D. C. 167, 196 F. 2d 557	4n
Uebersee Finanz Korporation v. McGrath, 343 U. S. 205	4n
von Opel v. von Opel, New York Supreme Court, New York County, Index No. 608-51	4

Statutes Cited

Federal Rules of Civil Procedure, Rule 24	2, 3, 5
Trading With The Enemy Act, 40 Stat. 411, 50 U. S. C. A. Appendix, §§ 1, *et seq.*	2, 3, 6, 7
28 U. S. C. A. Section 1254	2

IN THE

Supreme Court of the United States

October Term, 1955

No.

MARGOT VON OPEL, as receiver and sequestrator of the property of FRITZ VON OPEL,

Petitioner,

v.

UEBERSEE FINANZ KORPORATION, A. G., Liestal, Switzerland, FRITZ VON OPEL, HERBERT BROWNELL, JR., Attorney General and as Successor to the Alien Property Custodian, FRIMA TRUST ESTABLISHMENT OF VADUZ, Liechtenstein, HANS FRANKENBERG, EUGEN MEIER and ADOLF GAENG,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that a Writ of Certiorari issue to review the decree of the United States Court of Appeals for the District of Columbia Circuit, entered in the above-entitled action pursuant to its decision dated the 23rd day of June, 1955.

Jurisdiction

The judgment of the Court of Appeals was entered on June 23, 1955. The jurisdiction of this Court is invoked under 28 U. S. C. A., Section 1254. The time for filing this petition extended from September 21, 1955, to November 21, 1955 by order of this Court dated September 12, 1955.

Questions Presented

1. Can the claim of interest remaining in one whose assets have been vested by the Alien Property Custodian pursuant to the Trading With The Enemy Act, 40 Stat. 411, as amended, 50 U. S. C. A. Appendix, §§ 1, *et seq.*, be sequestrated by a receiver?

2. If the first question is answered in the affirmative, can such a receiver thereafter intervene as party plaintiff pursuant to Federal Rules of Civil Procedure, Rule 24, 28 U. S. C. A., in an action commenced against the Alien Property Custodian by the original claimant pursuant to Section 9(a) of the Trading With The Enemy Act, as amended?

3. Did the Court below misapply the holding of this Court in *Kaufman, et al.* v. *Societe Internationale, et al.*, 343 U. S. 156 (1953)?

Citations to Opinions Below

The opinion of the United States District Court for the District of Columbia is reported in 116 Fed. Supp. 145. The opinion of the Circuit Court of Appeals, printed in Appendix A hereto, *infra*, p. 8, is reported in —— Fed. 2d ——.

Statutes Involved

The statutory provisions involved are Federal Rules of Civil Procedure, Rule 24(a), 28 U. S. C. A.; and Sections 9(a), 9(f), 30 and 32(f) of the Trading With The Enemy Act, as amended (40 Stat. 411). They are printed in Appendix B, *infra*, p. 11.

Statement

On or about October 6, 1929, petitioner and respondent Fritz von Opel were duly married (47)* In or about 1932, said respondent purchased the 100 issued and outstanding shares of stock of respondent Uebersee Finanz Korporation, A. G., Liestal, Switzerland (hereinafter referred to as Uebersee) (57), and, thereafter, transferred to respondent Uebersee, among other things, certain shares of stock owned by him and described in detail in the Appendix below (46, 47). In or about 1940, petitioner and respondent Fritz von Opel emigrated to the United States. On or about June 4, 1942, the Alien Property Custodian seized in the State of New York said shares of stock (46).

On or about May 27, 1943, respondent Uebersee filed with the Alien Property Custodian, under the Trading With The Enemy Act, its notice of claim as lawful owner of the aforesaid property (52). On or about October 25, 1944, the above entitled action was commenced by respondent Uebersee against respondent Attorney General, as Successor to the Alien Property Custodian. Following trial on the merits, judgment was entered in favor of the Attor-

* Figures in parenthesis refer to page numbers of the Joint Appendix filed in the court below.

ney General on May 6, 1949.[1] Said judgment was affirmed by the Court of Appeals for the District of Columbia Circuit [2] and by this Court.[3]

Meanwhile, on or about April 28, 1949, respondent Fritz von Opel filed with the Custodian his notice of claim with respect to his interest in the aforesaid property, as lawful owner of 97% of the outstanding common stock of respondent Uebersee and, on that same day, filed his complaint for recovery of his interest against respondent Attorney General in the United States District Court for the Southern District of New York (Civil Action No. 50-70) (45-49). Said property, as pointed out above, had been vested in the State of New York and was maintained by the Custodian there.

Thereafter, on or about April 5, 1951, all property of respondent Fritz von Opel located in the State of New York, including his claim of interest against the Custodian, was sequestrated by order of the Supreme Court of the State of New York, County of New York, issued in a marital action between petitioner and respondent Fritz von Opel, entitled *von Opel* v. *von Opel,* Index No. 608-51 (11-14). On May 14, 1951, a judgment of separation was entered in said New York marital action in favor of petitioner, which judgment provided that respondent Fritz von Opel pay to petitioner, as and for her separate maintenance and support, the sum of $5,000 per month (15-17), no part of which has ever been paid.

On or about May 29, 1952, respondent Fritz von Opel was permitted to file, as a party plaintiff in the above entitled action, his complaint seeking recovery under his claim of interest in the property of respondent Uebersee

---

[1] *Uebersee Finanz Korporation* v. *Clark,* 82 F. Supp. 606.

[2] *Uebersee Finanz Korporation* v. *McGrath,* 191 F. 2d 327; 89 U. S. App. D. C. 167, 196 F. 2d 557.

[3] *Uebersee Finanz Korporation* v. *McGrath,* 343 U. S. 205.

vested by the Custodian (56-58). His intervention as plaintiff herein was authorized under the Mandate of this Court dated May 3, 1952. Respondents Frima Trust Establishment of Vaduz, Liechtenstein, Hans Frankenberg, Eugen Meier and Adolf Gaeng were also permitted to intervene as parties at that time.

Inasmuch as the claim of interest in the vested property alleged by said respondent in his complaint filed herein was substantially identical to the claim of interest alleged by said respondent in his action in the Southern District of New York, which claim of interest had been sequestrated by petitioner as statutory receiver, an order was duly entered in the New York marital action on or about September 24, 1953 authorizing petitioner's intervention in the above-entitled action as statutory receiver of respondent Fritz von Opel's claim of interest herein (6-7). Thereafter, petitioner made her motion for leave to intervene in the above-entitled action, pursuant to Rule 24 of the Federal Rules of Civil Procedure. The motion was denied by the United States District Court for the District of Columbia. The Court below affirmed the order of the District Court.

Reasons for Granting Writ

1. The challenged decision (Appendix A, *infra*, p. 8) fails to resolve novel and unsettled issues stemming out of the decision of this Court in *Kaufman, et al.* v. *Societe Internationale, et al.*, 343 U. S. 156 (Appendix C, *infra*, p. 14—majority opinion). There, this Court held "that non-enemy stockholders of non-enemy foreign corporations have a severable interest in corporate assets seized by the Custodian * * *". The "severable interest" of respondent Fritz von Opel expressly recognized by this Court in the *Kaufman* decision was seized by petitioner herein as statutory receiver thereof. But the decision of the lower Court

nevertheless still fails to accept the necessary consequences flowing from this Court's recognition of the existence of such severable interest, stating "Whatever legal terminology should properly be used to describe appellant's interest, Congress has made no provision for its judicial disposition in a suit under Section 9(a) or under any other provision of the Trading With The Enemy Act".

2. The Court below erroneously interpreted the powers and authority of a statutory receiver over sequestrated property and thereby prevented petitioner from qualifying as a proper claimant within the requirements of Section 9(a) (Appendix B, *infra*, p. 11). Petitioner, as a statutory receiver, succeeded to the entire right, title and claim of interest of respondent Fritz von Opel to the property vested by the Alien Property Custodian. In short, his claim of interest, cause of action herein, or whatever it is labeled, became hers. The Court below, however, without citing any authority, refused to view petitioner as said respondent's successor in interest and characterized petitioner's interest, as statutory receiver, as "only an interest in Fritz von Opel's claim to the vested property". This has been done contrary to the well established holding of this Court that a statutory receiver is a *successor to title** not a "lienor". *Broderick* v. *Rosner*, 294 U. S. 629 (1935).

3. The decision below is of immediate importance far beyond the particular facts and parties. Congress never intended the results which flow from the lower Court's application of Section 9(f) (Appendix B, *infra*, p. 12). If its holding that the claim of interest remaining in respondent Fritz von Opel is not subject to seizure by operation of law is permitted to stand, no remedy will be available to one in petitioner's position to collect interests owed by a claimant recovering property under Section 9(a). The claimant need only to bring his action in a District Court of his own choosing, take his property when it is returned to him and

* Italics ours.

leave the United States, being careful to avoid the state in which his receiver, in this action his wife, is waiting. That Congress never intended this consequence is clear from amendments to the Trading With The Enemy Act. When the Act was amended by the Settlement of War Claims Act of 1928 [4] and provisions for recovery of property under Sections 9(b) and 9(n) were added, Section 30 was also added providing for the attachment of the property about to be returned under those sub-sections (Appendix B, *infra*, p. 12). Again, in 1946 when the 79th Congress set up an administrative procedure for the return of property, provision was made for its attachment under Section 32(f) prior to its return [5] (Appendix B, *infra*, p. 13).

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Dated: Washington, D. C.
November 21, 1955.

Respectfully submitted,

RUSSELL HARDY,
Attorney for Petitioner,
1012 14th Street, N. W.,
Washington, D. C.

AMEN, GANS, WEISMAN & BUTLER,
17 East 63rd Street,
New York 21, New York,
of Counsel.

---

[4] March 10, 1928, 45 Stat. 254-279, 50 U. S. C. A. Appendix §§ 9(b), 9(n) and 30.

[5] First War Powers Act of 1941—Amendment March 8, 1946, 60 Stat. 50, 50 U. S. C. A. Appendix § 32(f).

Appendix A

(Opinion of United States Court of Appeals for the District of Columbia Circuit)

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12109

MARGOT VON OPEL,

Appellant,

v.

UEBERSEE FINANZ KORPORATION, A. G., LIESTAL, SWITZERLAND, *et al.*,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Decided June 23, 1955

MR. JOHN HARLAN AMEN, of the bar of the Court of Appeals, *pro hac vice*, by special leave of Court, with whom MR. RUSSELL HARDY was on the brief, for appellant.

MR. MYRON C. BAUM, Attorney, Department of Justice, with whom MR. GEORGE M. SEARLS, Attorney, Department of Justice, was on the brief, for appellee Herbert Brownell, Jr., Attorney General of the United States.

MR. EDWARD J. ENNIS, with whom MR. CLIFFORD FORSTER was on the brief, for appellee Fritz von Opel. MR. THURMAN ARNOLD also entered an appearance for appellee Fritz von Opel.

Appendix A

Before EDGERTON, Chief Judge, and PRETTYMAN and FAHY, Circuit Judges.

FAHY, Circuit Judge: The appeal is from an order of the District Court denying a motion for leave to intervene as party plaintiff filed by Margot von Opel, as receiver and sequestrator of the property of Fritz von Opel. The suit in which she seeks to intervene had been brought by her husband, Fritz von Opel, against the Attorney General, successor to the Alien Property Custodian, under Section 9(a) of the Trading with the Enemy Act [1] for recovery of property vested by the Custodian in 1942. Fritz von Opel's suit had been authorized by the Supreme Court in 1952 in *Uebersee Finanz-Korp.* v. *McGrath*, 343 U. S. 205, in view of the Court's decision rendered the same day in *Kaufman* v. *Societe Internationale*, 343 U. S. 156.[2] Appellant's status as receiver and sequestrator of property of Fritz von Opel grew out of an order of the Supreme Court of New York for New York County, so appointing her in marital litigation there pending between the husband and wife. A judgment had been entered in that litigation providing for her support by Fritz von Opel, and thereafter he had been adjudged in default.

It will be seen from the foregoing, and she so concedes, that appellant does not claim an interest in the vested property itself but only an interest in Fritz von Opel's claim to the vested property. See opinion of District Court accompanying its order herein, —— F. Supp. ——. If this is the correct position of the matter, her proposed intervention is not within the authorization of Section 9(a) of the Act, available only to one "claiming any interest, right,

---

[1] 40 Stat. 411, 419, as amended, 50 U. S. C. A., App. § 9(a).

[2] Fritz von Opel's suit had taken the form of an intervention in the earlier suit, brought in 1944 by Uebersee Finanz-Korporation, A. G., against the Attorney General, which became known as *Uebersee Finanz-Korp.* v. *McGrath, supra.*

or title in any money or other property" vested by the Custodian. And if her interest is considered to be in the vested property, then clearly its nature is that of a lien barred from being litigated in a Section 9(a) suit against the Custodian. This is so because Section 9(f) provides:

> "Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court." (50 U. S. C. A. App. § 9(f).)[3]

Faced with this legal dilemma appellant seeks to bring her interest into a legal area somewhere between a claim of interest in the vested property and one in the nature of a lien. What she really seeks is protection of her claim against her husband, who on his part claims valuable property in the hands of the custodian which he seeks to recover in the main suit. Whatever legal terminology should properly be used to describe appellant's interest, Congress has made no provision for its judicial disposition in a suit under Section 9(a) or under any other provision of the Trading with the Enemy Act. Clearly it is not within Section 17 "to enforce" the provisions of the Act, or within Section 34 to review determinations by the Attorney General of claims of creditors. And litigation under the Act is limited to that which the Act itself permits. *Tiedemann* v. *Brownell*, —— U. S. App. D. C. ——, ——F. 2d——.[4]

Affirmed.

---

[3] See *Berger* v. *Ruoff*, 90 U. S. App. D. C. 276, 195 F. 2d 775, *cert. denied*, 343 U. S. 950.

[4] Furthermore, Rule 24, Fed. R. Civ. P., relating to intervention, must be given application consistently with the limitations placed by Congress upon litigation under the Trading with the Enemy Act.

Appendix B

(Applicable Sections of the Trading With The Enemy Act, as Amended, and Federal Rules of Civil Procedure)

SECTIONS OF THE TRADING WITH THE ENEMY ACT, AS AMENDED

"§ 9. Claims to property transferred to custodian; notice of claim; filing; return of property; suits to recover

"(a) Any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: PROVIDED, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the

claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. * * *

* * *

"(f) Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court.

"§ 30. Attachment or garnishment of funds or property held by Custodian

"Any money or other property returnable under subsection (b) or (n) of section 9 [section 9(b) or (n) of this Appendix] shall, at any time prior to such return, be subject to attachment in accordance with the provisions of the code of law for the District of Columbia, as amended, relating to attachments in suits at law and to attachments for the enforcement of judgments at law and decrees in equity, but any writ of attachment or garnishment issuing in any such suit, or for the enforcement of any judgment or decree, shall be served only upon the Alien Property Custodian,

who shall for the purposes of this section be considered as holding credits in favor of the person entitled to such return to the extent of the value of the money or other property so returnable. * * * "

Section 32(f) provides:

"At least thirty days before making any return to any person other than a resident of the United States * * * the President * * * shall publish * * * a notice of intention to make such return * * * After publication of such notice of intention * * * the property or interest or proceeds specified shall be subject to attachment at the suit of any citizen or resident of the United States * * * ".

FED. RULES CIV. PROC. rule 24, 28 U. S. C. A.

"Rule 24. Intervention

"(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court or an officer thereof. As amended Dec. 27, 1946, effective March 19, 1948.

"(b) * * * "

Appendix C

(Opinion of Supreme Court of the United States)

SUPREME COURT OF THE UNITED STATES

No. 172—October Term, 1951

Eric G. Kaufman and Aenni C. Kaufman,
Petitioners,

v.

Societe Internationale Pour Participations Industrielles et Commerciales, S. A., etc., *et al.*

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

(April 7, 1952)

Mr. Justice Black delivered the opinion of the Court.

Acting under § 5(b) of the Trading with the Enemy Act,[1] the Alien Property Custodian vested in himself the American assets of Interhandel, a Swiss corporation.[2]

[1] 40 Stat. 411, 50 U. S. C. App. § 1, as amended by the First War Powers Act of 1941, 55 Stat. 839, 50 U .S. C. App. (Supp. V) § 5(b).

[2] Although the corporation is commonly called "Interhandel," its full legal name is Societe Internationale Pour Participations Industrielles et Commerciales S. A., etc. The American assets consisted of bank accounts and over 90% of the capital stock in the General Aniline & Film Corporation of Delaware, all of the assets apparently being valued at more than $100,000,000.00.

Appendix C

Interhandel sued in the District Court to recover the assets. The Custodian [3] answered alleging that the Swiss corporation was dominated and controlled by officers, agents, and stockholders who were engaged in a conspiracy with German nationals and with the German Government to operate the company's business in their interests while we were at war with Germany. Petitioners, United States citizens who own stock in Interhandel, filed a motion to intervene. They admitted the Custodian's charge that Interhandel was dominated by officers and stockholders who had been engaged in such a conspiracy. They also admitted the right of the Custodian to retain an interest in the seized assets proportional to the stock ownership of enemy stockholders. But petitioners contended that they and other non-enemy stockholders had claims in the corporate assets which it was the corporation's duty to protect. Alleging that the dominant enemy group which had charge of the suit would not press the corporate claim in a manner that would adequately protect the claims of innocent shareholders, petitioners asserted a right to intervene under Rule 24(a) of the Federal Rules of Civil Procedure. The District Court denied the motion to intervene, 90 F. Supp. 1011, and the Court of Appeals affirmed, —— U. S. App. D. C. ——, 188 F. 2d 1017. Underlying the claimed right of petitioners to intervene is an important question of the power of the Alien Property Custodian under the Trading with the Enemy Act, namely: What part of the assets of a corporation organized under the laws of a neutral country may the Custodian retain where part of the corporate stock is owned by enemies, part by American citizens, and part by nonenemy aliens? This question was reserved in *Clark* v.

[3] In 1946, the Attorney General succeeded to the powers and duties of the Alien Property Custodian. Exec. Order No. 9788, 11 Fed. Reg. 11981.

Uebersee Finanz-Korp., 332 U. S. 480, 489-490. To consider it we granted certiorari in this case. 342 U. S. 847.

First. Interhandel is a neutral corporation organized in Switzerland. Prior to 1941, even ownership of its stock and domination by enemy nationals would not have justified seizure of its assets. In order to reach the enemy interests in such neutral corporations, Congress amended the controlling Act in 1941. The background, scope and consequences of that amendment were discussed in *Clark* v. *Uebersee Finanz-Korp., supra.* We there held that the 1941 amendment authorized the Custodian to seize and vest in himself all property of any foreign country or national, even that of friendly or neutral nations. At the same time we refused to hold that the 1941 amendment deprived friendly or neutral nations or nationals of a right to have their assets returned if they could prove that they were free of any open or concealed enemy taint. The purpose of the amendment, we found, was "not to appropriate friendly or neutral assets but to reach enemy interests which masqueraded under those innocent fronts." *Clark* v. *Uebersee Finanz-Korp., supra* 485.

Thus, under the 1941 amendment the nonenemy character of a foreign corporation because it was organized in a friendly or neutral nation no longer conclusively determines that all interests in the corporation must be treated as friendly or neutral. The corporate veil can now be pierced. Enemy taint can be found if there are enemy officers or stockholders; even the presence of some nonenemy stockholders does not prevent seizure of all the corporate assets. But such a governmental seizure requires consideration of the plight of innocent stockholders. For as stated in the *Uebersee* case, the amendment does not contemplate appropriation of friendly or neutral assets. While Congress has clearly provided for forfeiture of

enemy assets, it has used no language requiring us to hold that innocent interests must be confiscated because of the guilt of other stockholders. Nor does any legislative history pointed out persuade us that Congress intended to inflict such harsh consequences upon the innocent. We decline to read such a congressional purpose into the Act.

Our holding is that when the Government seizes assets of a corporation organized under the laws of a neutral country, the rights of innocent stockholders to an interest in the assets proportionate to their stock holdings must be fully protected. This holding is not based on any technical concept of derivative rights appropriate to the law of corporations. It is based on the Act which enables one not an enemy as defined in § 2 to recover any interest, right or title which he has in the property vested. The innocent stockholder may not have title to corporate assets, but he does have an interest which Congress has indicated should not be confiscated merely because some others who have like interests are enemies.

Second. Section 9(a) of the Trading with the Enemy Act authorizes Interhandel to maintain this action for the recovery of all its assets because it has alleged that it is not enemy dominated. Alleging that they and others are nonenemy stockholders, petitioners charge that it is Interhandel's corporate duty to assert a claim for the return of their proportionate interests in the assets even though other stockholders who dominate the corporation are found to be enemies. Petitioners further allege that the corporate management refuses to assert such a claim, but continues to claim only a return of all assets on the theory that whatever return is obtained must be divided among enemy and nonenemy shareholders in proportion to their stock holdings. This position is taken, petitioners charge, because the suit is being controlled by the very stock-

holders on whose account the Custodian seized the property and whose interests will be worthless if they are found to be enemies. Petitioners allege that this enemy corporate management, fearing confiscation of its enemy-tainted interests, is about to settle the corporate claim with the Custodian for an amount less than the value of the nonenemy part of the assets. Should this be done, it is said the enemy management contemplates dividing the proceeds proportionately among enemy and nonenemy stockholders, thus violating the Act in two ways: (1) by depriving nonenemy stockholders of part of their property, and (2) by returning assets to foreign enemy stockholders.

A mere narration of the allegations shows that petitioners' fears are by no means fanciful. Indeed, the Government agrees with the dominant corporate management that the interests of enemy and non-enemy stockholders should be treated alike. The United States wishes to sell the entire assets of Interhandel. And it is argued that if nonenemy stockholders are to given a chance in court (which right is challenged), they should be limited to individual suits for money judgments against the Custodian. Petitioners claim a proportional right or interest in the specific assets of Interhandel and that they may not be driven to accept their share of whatever price the Government may happen to get from a sale of these valuable assets. In order to play safe, petitioners have filed a separate suit in a Federal District Court. But we think the questions involved in disputes like this can be more appropriately resolved in the corporate actions authorized by § 9(a) than by resort to a multiplicity of separate actions. In such suits the nonenemy stockholder in his own right may assert his nonenemy character in order to protect his own interest from the enemy taint caused by other stockholders. Courts trying such corporate actions have adequate equitable power and procedural flexibility to protect all interests

even when the corporate recovery is not for the benefit of all stockholders but only for those who are nonenemies.

In view of our holding that Congress has recognized that nonenemy stockholders of nonenemy foreign corporations have a severable interest in corporate assets seized by the Custodian, it follows that the allegations of these petitioners entitle them to intervene. These allegations, if true, show that petitioners' interests may be inadequately represented and that they may be bound by a judgment in this corporate action. This brings the claim of intervention squarely within Rule 24(a)(2) of the Federal Rules of Civil Procedure.[4]

Reversed.

MR. JUSTICE CLARK took no part in the consideration or decision of this case.

(Dissent not printed.)

---

[4] "Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; . . ." See *Sutphen Estates, Inc.* v. *United States*, 342 U. S. 19.

FILED
DEC 19 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1955

No. 532

MARGOT VON OPEL, as receiver and sequestrator of the property of Fritz von Opel,

Petitioner,

—v.—

UEBERSEE FINANZ-KORPORATION, A.G., LIESTAL, SWITZERLAND, FRITZ VON OPEL, HERBERT BROWNELL, JR., Attorney General and as Successor to the Alien Property Custodian, FRIMA TRUST ESTABLISHMENT OF VADUZ, LIECHTENSTEIN, HANS FRANKENBERG, EUGEN MEIER and ADOLF GAENG,

Respondents.

BRIEF FOR RESPONDENT FRITZ VON OPEL IN OPPOSITION TO PETITION FOR CERTIORARI

ARNOLD, FORTAS & PORTER
1229 19th Street, N. W.
Washington, D. C.

EDWARD J. ENNIS
165 Broadway
New York 6, N. Y.

CLIFFORD FORSTER
Of Counsel

INDEX

PAGE

Question Presented 1

Statement 2

Argument 2

Conclusion 6

Cases Cited:

Berger v. Ruoff, 90 App. D. C. 276, 195 F. 2d 775, cert. den., *sub nomine*, Berger v. McGrath, 343 U. S. 950 3
Booth v. Clark, 17 How. 332 5
Broderick v. Rosner, 294 U. S. 629 5

Collins v. McDonald, 98 F. 2d 258 5
Converse v. Hamilton, 224 U. S. 243 5

De La Mettrie v. James, 272 U. S. 731 3
Dyer v. Dyer, 231 App. Div. 453 4

Geary v. Geary, 272 N. Y. 390 5
Guaranty Trust Co. of New York v. Fentress, 61 F. 2d 329 (C. A. 7) 5

Matthews v. Matthews, 247 N. Y. 32 4
McCandless v. Furlaud, 292 U. S. 67 5
McKendry v. McKendry, 103 N. Y. S. 2d 183 4

Pennoyer v. Neff, 95 U. S. 714 4

Rubin v. Whitney, 295 N. Y. Supp. 255 4

PAGE

Senese v. Senese, 121 N. Y. S. 2d 498 4

Uebersee Finanz-Korporation v. Brownell, 133 F. Supp. 615 2

Uebersee Finanz-Korporation v. McGrath, 343 U. S. 205 2

Von Opel v. Uebersee Finanz-Korporation (case below), 116 F. Supp. 145, affd. 225 F. 2d 530 ..... 1, 2

Statutes:

N. Y. Civil Practice Act §1171-a 4, 5

Trading with the Enemy Act, 50 U. S. C. A. App. §§9(a), 9(f) 1, 2, 3

IN THE

Supreme Court of the United States

October Term, 1955

No. 532

MARGOT VON OPEL, as receiver and sequestrator of the property of Fritz von Opel,

Petitioner,

—v.—

UEBERSEE FINANZ-KORPORATION, A.G., LIESTAL, SWITZERLAND, FRITZ VON OPEL, HERBERT BROWNELL, JR., Attorney General and as Successor to the Alien Property Custodian, FRIMA TRUST ESTABLISHMENT OF VADUZ, LIECHTENSTEIN, HANS FRANKENBERG, EUGEN MEIER and ADOLF GAENG,

Respondents.

BRIEF FOR RESPONDENT FRITZ VON OPEL IN OPPOSITION TO PETITION FOR CERTIORARI

The petitioner, Margot von Opel, as receiver and sequestrator of the property of Fritz von Opel, has filed a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit rendered in this action on June 23, 1955, 225 F. 2d 530, affirming the decision of the District Court, 116 F. Supp. 145.

Question Presented

Whether the court below erred in denying petitioner, in her representative capacity as receiver and sequestrator of property of a claimant, leave to intervene in an action under §9(a) of the Trading with the Enemy Act, as amended, to recover vested property.

Statement

Pursuant to the opinion and mandate of this Court (343 U. S. 205) plaintiff intervener Fritz von Opel intervened in this action, in which petitioner here now seeks to intervene, to assert his claim to the vested property and the issues raised by his complaint (J. A. 56-58) and the defendant's answer (J. A. 62-63) have been tried and recently determined adversely to his claims. 133 F. Supp. 615.

On October 8, 1953, petitioner here moved to intervene as party plaintiff on the grounds that she has a substantial interest in the subject matter inadequately represented by the present parties and that she will be adversely affected by disposition of the property which is subject to disposition of the court in this action (J. A. 1-2). Her proposed complaint alleges that by virtue of an order of the Supreme Court of the State of New York of April 5, 1951 she is "the receiver and sequestrator of the cause of action alleged herein by plaintiff Fritz von Opel and holds plaintiff Fritz von Opel's legal and beneficial ownership interest, right and title to the property at issue herein" (J. A. 18-19). Judge Laws denied the motion to intervene (J. A. 64-68), 116 F. Supp. 145, and the Court of Appeals unanimously affirmed, 225 F. 2d 530, ruling that neither §9(a) nor any other section of the Trading with the Enemy Act authorizes the petitioner's claimed intervention.

Argument

1. The Court of Appeals carefully considered all the arguments here presented and correctly ruled that under the Trading with the Enemy Act (a) if petitioner seeks to intervene on the basis of an interest in Fritz von Opel's claim to the property, she has no standing in court because

§9(a) of the Trading with the Enemy Act does not authorize such an action; (b) if her interest is that of a lienor she is barred under §9(f) of the Act, and (c) if her claim be based on some other ground it is barred because litigation under the Act is strictly limited to proceedings authorized by that Act.

We submit that the Court has already disposed in previous cases of the contention that lienors or other claimants to an interest asserted in vested alien property have standing to sue under the Trading with the Enemy Act. *De la Mettrie* v. *James*, 272 U. S. 731, affirming 55 App. D. C. 354, 6 F. 2d 479; *Berger* v. *Ruoff*, 90 App. D. C. 276, 195 F. 2d 775, cert. den. *sub nomine*, *Berger* v. *McGrath*, 343 U. S. 950. No reason is cited by petitioner why the present case should be an exception to the rule of limitation of actions expressed in §9(f) of the Act, and studiously applied by the courts. Indeed, sound public policy requires that the door be closed to actions such as petitioner seeks to enforce lest the Alien Property Custodian be hampered in the proper performance of his duty which is control and supervision of seized enemy property.

The statutory provisions for property about to be returned (Pet., p. 7) do not support petitioner's efforts to intervene prior to a final decision to return vested property. On the contrary, they disclose the statutory scheme of protecting creditors after final decision to return property rather than by allowing creditors to intervene in the litigation between a claimant and the Custodian.

2. But even if the Trading with the Enemy Act could possibly be construed as not limiting suit to litigation specifically authorized by statute, petitioner has no standing to intervene. Petitioner in this action is asserting her claim here solely as a sequestrator and receiver of the property

in New York of Fritz von Opel designated by an order of the Supreme Court of New York pursuant to New York Civil Practice Act §1171-a, obtained in an undefended action for a legal separation against Fritz von Opel who was neither a resident of nor served with process within the State of New York.

Under New York decisions recognizing constitutional limitations, following *Pennoyer* v. *Neff*, 95 U. S. 914, §1171-a has been construed to mean that a receiver or sequestrator can be appointed only for property within the State of New York, as the statute expressly states, and property does not include disputed claims. *Geary* v. *Geary*, 272 N. Y. 390; *Matthews* v. *Matthews* (second appeal), 247 N. Y. 32; *Dyer* v. *Dyer*, 231 App. Div. 453, 247 N. Y. S. 540; *Senese* v. *Senese*, 121 N. Y. S. 2d 498; *McKendry* v. *McKendry*, 103 N. Y. S. 2d 183; *Rubin* v. *Whitney*, 295 N. Y. S. 255. The order appointing petitioner receiver and sequestrator of Fritz von Opel's property specifically is limited to property "within the State of New York" (J. A. 13). Any reference in the sequestration order to this law suit (J. A. 13) is wholly nugatory because it is patently not property "within the State of New York," where Fritz von Opel concededly did not reside, having a situs as a chose in action only in the District of Columbia.

3. Furthermore, even if it is assumed that the law of New York authorizes a receiver or sequestrator under C. P. A. §1171-a to intervene and assert Fritz von Opel's rights in his present suit against the Attorney General as successor to the Alien Property Custodian, the general rule and the rule applicable in the District of Columbia is that foreign receivers may not sue where there was neither jurisdiction over the subject matter or *in personam* over the debtor in the action in which the receiver was appointed.

Booth v. *Clark*, 17 How. 332; *McCandless* v. *Furlaud*, 292 U. S. 67; *Collins* v. *McDonald*, 98 F. 2d 258 (C. A. D. C.); *Guaranty Trust Co. of New York* v. *Fentress*, 61 F. 2d 329 (C. A. 7).

Broderick v. *Rosner*, 294 U. S. 629, cited by petitioner, and *Converse* v. *Hamilton*, 224 U. S. 243, where a statutory receiver has been permitted to sue in foreign jurisdictions as successor to the debtor to collect his property, are based upon jurisdiction *in personam* obtained over the debtor in the foreign state and hence are not in point.

It is absolutely clear that jurisdiction *in personam* was not obtained in New York over Fritz von Opel either at the time petitioner's separation action was commenced or when she was appointed receiver and sequestrator of his property under C. P. A. §1171-a as he was not a resident of the State of New York, was not there at the time such proceedings were brought, nor was he personally served with process. The State of New York could not obtain jurisdiction over the subject matter of this action since the cause of action Fritz von Opel has against the Attorney General which is the basis for petitioner's attempted intervention has a situs only in the District of Columbia where Fritz von Opel's suit was brought. Petitioner, therefore, has no standing to sue in the District of Columbia, the State of New York is powerless to grant her such authority, and the courts of the District of Columbia properly denied her as a statutory receiver or sequestrator leave to intervene.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted,

ARNOLD, FORTAS & PORTER
1229 19th Street, N. W.
Washington, D. C.

EDWARD J. ENNIS
165 Broadway
New York 6, N. Y.

CLIFFORD FORSTER
Of Counsel

APPENDIX

Section 1171-a of the New York Civil Practice Act provides:

"Where in an action for divorce, separation, annulment or declaration of nullity of a void marriage it appears to the court that the defendant is not within the state, or cannot be found therein or is concealing himself therein, so that process cannot be personally served upon him the court may at any time and from time to time make any order or orders without notice directing the sequestration of his property, both real and personal and whether tangible or intangible, within the state, and may appoint a receiver thereof, or by injunction or otherwise take the same into its possession and control. The property thus sequestrated and the income therefrom may be applied in whole or in part and from time to time, under the direction of the court and as justice may require, to the payment of such sum or sums as the court may deem it proper to award, by order or judgment as the case may be, and during the pendency of the action or at the termination thereof, for the education or maintenance of any of the children of a marriage, or for the support of the wife, or for her expenses in bringing and carrying on said action and the proceedings incidental thereto or connected therewith; and if the rents and profits of the real estate, together with the other property so sequestrated, be insufficient to pay the sums of money required, the court, upon such terms and conditions as it may prescribe, may direct the mortgage or sale of sufficient of said real estate to pay such sums. The court may appoint the wife receiver or sequestrator in such cases. The court may authorize the wife to use

and occupy, free of any liability for rent or use and occupation or otherwise, any house or other suitable property of her husband as a dwelling for herself or herself and her children, and may likewise turn over to her for the use of herself or herself and her children any chattel or chattels of her husband. The relief herein provided for is in addition to any and every other remedy to which the wife may be entitled under the law."

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute and rule involved	3
Statement	3
Argument	6
Conclusion	12
Appendix	13

CITATIONS

Cases:

Ahrenfeldt . *Miller*, 262 U.S. 60	7
Banco Mexicano v. *Deutsche Bank*, 263 U.S. 591	7
Becker Co. v. *Cummings*, 296 U.S. 74	7
Berger v. *Ruoff*, 195 F. 2d 775, certiorari denied, 343 U.S. 950	8
Booth v. *Clark*, 17 How. 322	11
Central Trust Co. v. *Garvan*, 254 U.S. 554	9
Collins v. *McDonald*, 98 F. 2d 258	11
Crone v. *Sutherland*, 63 F. 2d 895	9
Cummings v. *Hardee*, 102 F. 2d 622, certiorari denied, 307 U.S. 637	9
Great Western Mining Co. v. *Harris*, 198 U.S. 561	11
Kaufman v. *Societe Internationale*, 343 U.S. 156	4, 5, 6
LaDue & Co. v. *Brownell*, 220 F. 2d 468, certiorari denied, 350 U.S. 823	9
La Mettrie v. *James*, 6 F. 2d 479, affirmed *sub. nom.* *De La Mettrie* v. *James*, 272 U.S. 731	8
McCandless v. *Furlaud*, 293 U.S. 67	11
Panatech Corp. v. *Carl Zeiss, Inc.*, 110 F. Supp. 664	9
Pass v. *McGrath*, 192 F. 2d 415, certiorari denied, 342 U.S. 910	10
Pflueger v. *United States*, 121 F. 2d 732, certiorari denied, 314 U.S. 617	7, 9
Sigg-Fehr v. *White*, 285 Fed. 949	9
Sterrett v. *Second National Bank*, 248 U.S. 73	11

Cases—Continued

	Page
Tiedemann v. *Brownell*, 222 F. 2d 802	7
Uebersee Finanz-Korporation v. *Clark*, 82 F. Supp. 602	3
Uebersee Finanz-Korporation v. *McGrath*, 191 F. 2d 327, 196 F. 2d 557	4
Uebersee Finanz-Korporation v. *McGrath*, 343 U.S. 205	4
Uebersee Finanz-Korporation v. *Markham*, 158 F. 2d 313, affirmed *sub nom. Clark* v. *Uebersee Finanz-Korp.*, 332 U.S. 480	3, 8-9
United States ex rel. Goldschmidt v. *Sutherland*, 51 F. 2d 607, certiorari denied, 284 U.S. 667	9
von Bruning v. *Sutherland*, 29 F. 2d 631	9

Statute and rule:

Trading with the Enemy Act, 40 Stat. 411, 50 U.S.C. App. 1, *et seq.*:	
Section 7(c)	3, 7, 13
Section 9(a)	3, 5, 6, 7, 9
Section 9(f)	3, 5, 6, 7, 11
Section 33	3, 10, 15
Section 34	7
Rule 24, Federal Rules of Civil Procedure	3

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 532

MARGOT VON OPEL, as Receiver and Sequestrator of the Property of FRITZ VON OPEL, PETITIONER

v.

UEBERSEE FINANZ-KORPORATION, A. G., Liestal, Switzerland, FRITZ VON OPEL, HERBERT BROWNELL, JR., Attorney General and as Successor to the Alien Property Custodian, FRIMA TRUST ESTABLISHMENT OF VADUZ, Liechtenstein, HANS FRANKENBERG, EUGEN MEIER AND ADOLPH GAENG

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT ATTORNEY GENERAL IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court is reported in 116 F. Supp. 145. The opinion of the Court of

Appeals for the District of Columbia Circuit is reported in 225 F. 2d 530.

JURISDICTION

The judgment of the Court of Appeals was entered on June 23, 1955. The time for filing a petition for writ of certiorari was extended, by order of the Chief Justice to November 21, 1955. The petition for a writ of certiorari was filed on November 21, 1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Petitioner was appointed receiver and sequestrator of the property of her husband, respondent Fritz von Opel, within the State of New York, in order to collect alimony awarded to her in an action which she instituted in New York for a decree of separation. The questions presented are:

1. Whether petitioner as receiver and sequestrator of her husband's property in New York may intervene as an independent party plaintiff in an action brought by her husband against the Attorney General in the United States District Court for the District of Columbia for the recovery of vested property under Section 9(a) of the Trading with the Enemy Act.

2. Whether petitioner as receiver and sequestrator of her husband's property in New York acquired any interest in the cause of action asserted by her husband against the Attorney General in the United States District Court for the

District of Columbia and whether she has any standing to sue in the District of Columbia.

STATUTE AND RULE INVOLVED

The provisions involved are Sections 7(c), 9(a), 9(f) and 33 of the Trading with the Enemy Act, 40 Stat. 411, as amended, 50 U.S.C. App. 1 *et seq.*, and Rule 24 of the Federal Rules of Civil Procedure. These are set forth in the appendix to the petition, except for Sections 7(c) and 33 which are printed in the Appendix, *infra*, pp. 13-15.

STATEMENT

This action was instituted on October 25, 1944, by Uebersee Finanz-Korporation, A.G. under Section 9(a) of the Trading with the Enemy Act, as amended, to recover certain property which had been vested by the Alien Property Custodian in 1942. A motion to dismiss the complaint for failure to state a claim was granted by the District Court on September 21, 1945. The Court of Appeals for the District of Columbia Circuit reversed, one judge dissenting, 158 F. 2d 313, and this Court affirmed, 332 U.S. 480, holding that since the complaint alleged that the plaintiff corporation was free from enemy taint it stated a cause of action.

Thereafter, the action proceeded to trial on the merits and a judgment in favor of the Attorney General was entered on May 6, 1949, together with findings of fact and conclusions of law. The opinion of the District Court is reported at 82 F. Supp. 602. That court held in substance that

plaintiff Uebersee Finanz-Korporation was owned and controlled by enemies within the meaning of the Trading with the Enemy Act, and was enemy tainted. The Court of Appeals affirmed, one judge dissenting, 191 F. 2d 327, 196 F. 2d 557, and this Court affirmed unanimously, 343 U.S. 205. Although the judgment against plaintiff Uebersee Finanz-Korporation was affirmed, the case was remanded to the District Court for further proceedings to consider the rights of Fritz von Opel, in view of this Court's decision in *Kaufman* v. *Societe Internationale,* 343 U.S. 156, decided the same day, in which it had held that an innocent stockholder in a neutral corporation might intervene in an action under Section 9(a) of the Trading with the Enemy Act to assert his rights to recover a proportionate part of the vested assets of such corporation.

Pursuant to the mandate of this Court, the District Court permitted Fritz von Opel to intervene as a party plaintiff to assert whatever rights he might have.[1] After trial of the issues raised by Fritz von Opel's complaint in intervention, the District Court denied recovery holding that he was

---

[1] Petitioner notes (Pet. 5) that Frima Trust Establishment, Hans Frankenberg, Eugen Meier and Adolf Gaeng were permitted to intervene as parties defendant. But, as the District Court pointed out, these parties were asserted to be the legal owners of the stock of plaintiff Uebersee Finanz-Korporation and their intervention was permitted only to answer the complaint of Fritz von Opel, not to assert a claim against the Attorney General (Appendix below 68; 116 F. Supp. 147, 148).

an enemy by reason of doing business within enemy territory, that he was not an innocent stockholder within the meaning of the *Kaufman* decision, *supra,* and that he and his interest in the property were enemy tainted (133 F. Supp. 615).[2]

After the complaint in intervention had been filed, but before trial, petitioner moved to intervene as an additional party plaintiff. Her motion was based upon her appointment by the Supreme Court of the State of New York as receiver and sequestrator of the property of Fritz von Opel within the State of New York in an action instituted by petitioner against Fritz von Opel, a nonresident of New York, for a decree of separation. Such order of appointment was entered by the New York court on April 5, 1951. By opinion dated November 18, 1953 (App.[3] 64-68; 116 F. Supp. 145), appellant's motion was denied. In the opinion of the District Court, petitioner was claiming a lien upon the property involved in this action, a claim which was specifically prohibited by the provisions of Section 9(f) of the Trading with the Enemy Act. The court was also of the view that the consent to suit embodied in Section 9(a) of the Act did not contemplate a multiplicity of parties asserting the same cause of action and that the Custodian was entitled to be protected

---

[2] Judgment was entered against Fritz von Opel on November 22, 1955. Accordingly, the time for appeal will not expire until January 21, 1955.

[3] "App." references are to the Joint Appendix in the court below, on file with this Court.

from the necessity of litigating creditors' claims or matrimonial claims in an action to recover vested property.

On appeal, the order denying petitioner's motion was unanimously affirmed (Pet. App. 8-10). The Court of Appeals held that petitioner was not entitled to intervene since she did not claim an "interest, right, or title" to the vested property within the terms of Section 9(a) of the Trading with the Enemy Act; and that if she attempted to assert such interest it would be in the nature of a lien, a claim barred by the provisions of Section 9(f) of the Act.

ARGUMENT

1. The petition (p. 5) urges as the first reason for granting the writ that the decision below "fails to resolve novel and unsettled issues stemming out of the decision of this Court" in *Kaufman* v. *Societe Internationale,* 343 U.S. 156. The question whether a wife who is entitled to alimony payments under a State decree should be permitted to intervene in a suit under Section 9(a) is certainly novel, but it hardly rises to the importance of a question calling for review by this Court. As to the application to this case of the rule laid down in *Kaufman,* petitioner's husband, Fritz von Opel, has been permitted to intervene as a party plaintiff and has been given full opportunity to assert his rights. Petitioner's claim, however, is simply that of a wife seeking to recover alimony from her husband; by no stretch of the imagination is she an innocent stockholder in a neutral corporation of which the assets have been vested. She is merely a creditor

of her husband and, like other creditors, must wait until he has obtained recovery in his action against the Attorney General and must then assert her rights to the funds recovered, if any.

2. A suit under Section 9(a) is a suit against the United States which must be brought within the terms of the Government's consent to suit. *Banco Mexicano* v. *Deutsche Bank,* 263 U.S. 591, 603; *Becker Co.* v. *Cummings,* 296 U.S. 74, 78; *Pflueger* v. *United States,* 121 F. 2d 732, 736 (C.A. D.C.), certiorari denied, 314 U.S. 617. Consent to suit under the Act is provided only by Sections 9(a) and 34 [4] and these remedies are exclusive. Section 7(c), Trading with the Enemy Act; *Becker Co.* v. *Cummings, supra; Ahrenfeldt* v. *Miller,* 262 U.S. 60; *Tiedemann* v. *Brownell,* 222 F. 2d 802 (C.A. D.C.). Under the express terms of 9(a), a plaintiff must be a person claiming a right, title or interest in or to the vested property. Petitioner here has no right, title or interest in the property involved and could not acquire any such interest as a matter of law. Indeed, the acquisition of an interest under the circumstances claimed is expressly prohibited by the terms of the Trading with the Enemy Act, Section 9(f).[5] This Section

---

[4] Section 34 relates only to complaints for review of the Attorney General's determination of claims asserted by creditors of the enemy whose property has been vested and is thus not relevant here.

[5] This would seem to be the case whether the interest claimed is in the vested property as a whole or in the "severable interest" of a stockholder (see Pet. 5). In either event it is vested property and covered by Section 9(f).

is clear upon its face and has been consistently interpreted as preventing the acquisition of any interest in property after such property has been vested in the Alien Property Custodian. *Berger* v. *Ruoff*, 195 F. 2d 775(C.A. D.C.), certiorari denied, 343 U.S. 950; *La Mettrie* v. *James*, 6 F. 2d 479 (C.A. D.C.), affirmed *sub nom. De La Mettrie* v. *James*, 272 U.S. 731. It is of no moment that petitioner's claim is asserted by way of intervention rather than by original suit. In both of the cases cited, the courts expressly rejected an asserted right of intervention based upon the alleged acquisition of an interest in the property subsequent to vesting.

Since petitioner could not acquire an interest in the vested property, she may not intervene to file a complaint which can assert no such interest, and the courts below properly so held. To meet this difficulty, petitioner now asserts that she is not claiming any interest in the vested property which is the subject of the action, but that what she claims is an interest in the cause of action asserted by the intervener-plaintiff Fritz von Opel.

But if all that petitioner claims is an interest in a cause of action which has not been vested, then she is not a proper party plaintiff, by intervention or otherwise, to a suit under Section 9(a), for that Section only consents to suits against the United States by persons claiming an interest, right, or title in property the Custodian has vested or seized. *Uebersee Finanz-Korporation* v. *Markham*, 158 F. 2d 313, 314 (C.A. D.C.), affirmed *sub nom. Clark*

v. *Uebersee Finanz-Korp.*, 332 U.S. 480; *Sigg-Fehr* v. *White*, 285 Fed. 949 (C.A. D.C.); *von Bruning* v. *Sutherland*, 29 F. 2d 631 (C.A. D.C.); *United States ex rel. Goldschmidt* v. *Sutherland*, 51 F. 2d 607 (C.A. D.C.), certiorari denied, 284 U.S. 667; *Crone* v. *Sutherland*, 63 F. 2d 895 (C.A. D.C.); *Cummings* v. *Hardee*, 102 F. 2d 622, 627 (C.A. D.C.), certiorari denied, 307 U.S. 637; *Pflueger* v. *United States*, 121 F. 2d 732, 735 (C.A. D.C.), certiorari denied, 314 U.S. 617. In short, Section 9(a) authorizes suits by persons having claims against the United States, not suits by persons who have claims against persons having claims against the United States. Congress has not authorized the courts to constrain the Custodian to litigate petitioner's matrimonial problems, nor has it authorized the injunction asked by petitioner's proposed complaint in intervention (App. 18-19) against any disposition by him of the vested property. Cf. *Sigg-Fehr* v. *White*, *supra*.

3. Even if it were to be assumed, *arguendo*, that petitioner had a right, title, or interest within the terms of Section 9(a), she still cannot satisfy the conditions to suit stated in that Section. The statute requires that before instituting suit a claimant must file a notice of claim with the Custodian. This requirement is a condition precedent and goes to the jurisdiction of the court. *La Due & Co.* v. *Brownell*, 220 F. 2d 468 (C.A. 7), certiorari denied, 350 U.S. 823; *Panatech Corp.* v. *Carl Zeiss, Inc.*, 110 F. Supp. 664, 665 (S.D.N.Y.). And see, *Central Trust Co.* v. *Garvan*, 254 U.S. 554, 567-568.

Petitioner has not filed such a notice of claim and under the provisions of Section 33 of the Trading with the Enemy Act her time to do so expired on February 9, 1955.

Furthermore, actions to recover property vested in 1942, as here (App. 52, 54, 60), where no notice of claim has been filed within two years of the date of vesting, were barred after April 30, 1949, by the provisions of Section 33 of the Act. *Pass* v. *McGrath,* 192 F. 2d 415 (C.A. D.C.), certiorari denied, 342 U.S. 910. The instant motion to intervene was filed by petitioner on October 8, 1953.

4. Petitioner's claim of a right to intervene suffers from still further disabilities. The order appointing petitioner receiver and sequestrator of the property of her husband is necessarily limited to the property of her husband within the State of New York. Paragraph 2 D of that order (App. 13), it is true, purported to vest in petitioner, as receiver, any claim or cause of action which existed in favor of Fritz von Opel against the Alien Property Custodian which was "the subject of the law suit entitled *Uebersee Finanz-Korporation, A.G.* v. *J. Howard McGrath, Atty. Gen.*" then pending in the Court of Appeals for the District of Columbia Circuit. But, as of the date of the order of sequestration, neither Fritz von Opel nor the Custodian was subject to the *in personam* orders of the courts of that State, so it would seem that whatever "cause of action" von Opel had against the Custodian was not property "within" the State of

New York or subject to the orders of its courts. *Booth* v. *Clark,* 17 How. 322; *McCandless* v. *Furlaud,* 293 U.S. 67, 75.

It is also well settled that a receiver of property may not sue in the courts of another jurisdiction and that his appointment is of no effect in such courts. *Booth* v. *Clark, supra; Great Western Mining Co.* v. *Harris,* 198 U.S. 561; *Sterrett* v. *Second National Bank,* 248 U.S. 73; *McCandless v. Furlaud, supra; Collins* v. *McDonald,* 98 F. 2d 258 (C.A. D.C.). Under these authorities, a foreign receiver may sue in another jurisdiction only if he has also been appointed receiver by the courts of that jurisdiction. Failing such appointment, the foreign receiver is without standing. Cases permitting statutory receivers to bring suit in a foreign jurisdiction are limited to the situation in which title has been conferred upon the receiver by the law of the jurisdiction of appointment. We need not consider here whether the New York statutes purported to confer title upon petitioner as receiver, for it is clear that under Section 9(f) of the Trading with the Enemy Act she could not acquire title to property vested in the Attorney General. Petitioner, therefore, had no standing to sue in the courts of the District of Columbia in the absence of an appointment by the United States District Court for the District of Columbia.

CONCLUSION

The decision below is clearly correct and there is no conflict. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.
DALLAS S. TOWNSEND,
Assistant Attorney General.
JAMES D. HILL,
GEORGE B. SEARLS,
MYRON C. BAUM,
Attorneys.

DECEMBER, 1955.

APPENDIX

Trading with the Enemy Act, c. 106, 40 Stat. 411, as amended (50 U.S.C. App.):

Sec. 7(c). If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.

Any requirement made pursuant to this Act, or a duly certified copy thereof, may be filed, registered, or recorded in any office for the filing, registering or recording of conveyances, transfers, or assignments of any such property or rights as may be covered by such requirement (including the proper office for filing, registering, or recording conveyances, transfers, or assignments of patents, copyrights, trade-marks, or any rights therein or any other rights); and if so filed, registered, or recorded shall impart the same notice and have

the same force and effect as a duly executed conveyance, transfer, or assignment to the Alien Property Custodian so filed, registered, or recorded.

Whenever any such property shall consist of shares of stock or other beneficial interest in any corporation, association, or company or trust, it shall be the duty of the corporation, association, or company or trustee or trustees issuing such shares or any certificates or other instruments representing the same or any other beneficial interest to cancel upon its, his, or their books all shares of stock or other beneficial interest standing upon its, his, or their books in the name of any person or persons, or held for, on account of, or on behalf of, or for the benefit of any person or persons who shall have been determined by the President, after investigation, to be an enemy or ally of enemy, and which shall have been required to be conveyed, transferred, assigned, or delivered to the Alien Property Custodian or seized by him, and in lieu thereof to issue certificates or other instruments for such shares or other beneficial interest to the Alien Property Custodian or otherwise, as the Alien Property Custodian shall require.

The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be

limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States.

* * * * *

Sec. 33. No return may be made pursuant to section 9 or 32 unless notice of claim has been filed: (a) in the case of any property or interest acquired by the United States prior to December 18, 1941, by August 9, 1948; or (b) in the case of any property or interest acquired by the United States on or after December 18, 1941, not later than one year from February 9, 1954, or two years from the vesting of the property or interest in respect of which the claim is made, whichever is later; except that return may be made to successor organizations designated pursuant to section 32 (h) of this Appendix if notice of claim is filed before the expiration of one year from August 23, 1954. No suit pursuant to section 9 may be instituted after April 30, 1949, or after the expiration of two years from the date of the seizure by or vesting in the Alien Property Custodian, as the case may be, of the property or interest in respect of which relief is sought, whichever is later, but in computing such two years there shall be excluded any period during which there was pending a suit or claim for return pursuant to section 9 or 32 (a) hereof.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1955 [illegible] 794